

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

**Revision of the Commission's Rules to  
Ensure Compatibility with Enhanced 911  
Emergency Calling Systems**

Petition for Limited Waiver

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

**REQUEST FOR LIMITED WAIVER**

Montana Wireless, Inc. ("MWI"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18 (c) of the Commission's Rules.<sup>1</sup> In particular, vendor delays have made MWI's timely compliance with Section 20.18 (c) impossible. MWI therefore requests that it be allowed until June 30, 2003, to test and deploy TTY capability throughout its network.

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<sup>1</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Commission's Rules provides that "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY). 47 C.F.R. § 20.18 (c).

## **I. BACKGROUND**

MWI is a wholly owned subsidiary of Blackfoot Telephone Cooperative, Inc. ("Blackfoot"), a rural telephone cooperative that provides local exchange telephone and other telecommunications services in the Missoula, Montana area. MWI is licensee of Broadband PCS Station WPOI210 in the Broadband Personal Communications Service ("PCS"). Station WPOI210 is a license partitioned from the 30 MHz A-Block licensee for the Spokane-Billings Major Trading Area ("MTA"). On November 1, 1996, the Commission approved MWI's application to partition the Missoula and Kalispell Basic Trading Areas ("BTAs") from the Spokane-Billings MTA and Powell County from the Butte BTA. MWI uses Nortel Network's ("Nortel") CDMA equipment for its PCS network.

MWI is committed to complying with Commission requirements regarding TTY, Automatic Location Identification ("ALI") and Communications Assistance for Law Enforcement Act ("CALEA"). However, in order to comply with these government mandates, MWI must upgrade its system. As the Commission is aware from MWI's previously-filed TTY Quarterly Reports, due to Nortel's discontinuation of its support of MWI's current dual-load wireless and wireline traffic switch, MWI must purchase a second switch and split the traffic from the existing switch. Before MWI can split the traffic, it must upgrade the system software to LWW007 (the equivalent of wireless MTX 9). Once the switch split is achieved, MWI must upgrade the system software a second time to wireless load MTX 10. Because of Nortel's decision to no longer support its dual mode switch, MWI has been put in the unusual circumstance of having to perform a technically complex switch split seamlessly. Nevertheless,

MWI is committed to do this so as to comply with Commission E911 TTY and ALI and CALEA mandates.

Before MWI can proceed with the complex implementation task ahead of it, however, it must obtain the necessary software and hardware from its longtime vendor, Nortel. As MWI informed the Commission in its April 15 Quarterly TTY Report, it has had difficulty even obtaining a price quote from Nortel. Attached hereto is a copy of a letter dated June 10, 2002, from Nortel's Senior Sales Executive, Brian Meehan, to MWI parent company Blackfoot Telephone Cooperative's Dave Martin. This letter explains and apologizes for the delay in providing Blackfoot with a price quote for the required technology. The letter does not, however, provide that price quote, but assures that one will be forthcoming in the near future. To date, Nortel has not provided the promised price quote.

## **II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE**

Good cause exists for the FCC to grant MWI's request for a limited waiver of the June 30, 2002 TTY compliance deadline.<sup>2</sup> Good cause is shown and waiver of a rule is appropriate if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>3</sup> Similarly, under the Commission’s rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or

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<sup>2</sup> The Commission may grant an extension or waiver of a compliance deadline for good cause shown. *See* 47 C.F.R. § 1.3.

<sup>3</sup> Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

contrary to the public interest, or the applicant has no reasonable alternative.<sup>4</sup> The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance “is due to circumstances beyond the licensee’s control.”<sup>5</sup> Moreover, in the context of other Section 20.18 regulations governing deployment of 911 location identification capabilities, the Commission has specifically recognized that “technology-related issues” delaying implementation could warrant grant of a waiver to allow for their resolution.<sup>6</sup>

In MWI's case, special circumstances exist because Nortel has not been able to provide MWI with a quote regarding the projected cost of the switch installation and split; therefore, MWI will not be able to implement and test the technology upgrades prior to the deadline. MWI has been diligent in requesting information from Nortel, but the strain of assisting its customers in complying with regulatory mandates has apparently exhausted Nortel's resources. Nortel assures MWI that a quote will be forthcoming and MWI will soon be able to move forward with its regulatory upgrades. Therefore, MWI is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable period after the original deadline. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as MWI, because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

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<sup>4</sup> See 47 C.F.R. § 1.925(b)(3).

<sup>5</sup> E.g., *Order, McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

<sup>6</sup> See *Fourth Memorandum Opinion and Order, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) (“In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that

Finally, the underlying purpose of Section 20.18(c) – “requiring carriers to achieve TTY/digital compatibility at the earliest possible date”<sup>7</sup> – would be frustrated by strict enforcement of the rule’s June 30, 2002 deadline in MWI’s case. The FCC has suspended and waived the compliance deadline as to digital wireless carriers for more than three years “because the technology did not exist to enable TTY signals to be transmitted over digital wireless systems at the time the rule was originally implemented.”<sup>8</sup> When it became apparent that the wireless industry and representatives of the disability community had developed solutions for nearly all air interfaces, the FCC adopted a two-stage deadline where carriers were to have obtained all software upgrades and equipment necessary for their systems to be capable of transmitting 911 calls from TTY devices by December 31, 2001, and “an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community.”<sup>9</sup> Enforcing a strict deadline against MWI when the necessary hardware and software upgrades for TTY capability on its network are not available to it would defeat the whole purpose of the rule; MWI requires the assistance and cooperation of its equipment vendor, Nortel, to achieve compliance. Such assistance and cooperation, while promised, has been slow in coming. MWI submits that application of the June 30, 2002 deadline to it would be contrary to the public interest and unduly burdensome and respectfully requests an additional twelve months, until June 30, 2003, to come into compliance with Section 20.18(c) of the Commission’s Rules.

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these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

<sup>7</sup> *Fourth Report and Order* at ¶ 29.

<sup>8</sup> *Id.* at ¶ 7.

<sup>9</sup> *Id.* at ¶ 8.

MWI is requesting a twelve month extension because several steps must be taken before it will achieve compliance. Not only must it receive a quote from Nortel, but it must negotiate with Nortel an agreement to acquire the technology. Once the contract process is completed, MWI must upgrade its software in preparation for the installation of the second switch. MWI must also determine if it will require any modifications to its physical plant to accommodate the additional hardware, such as additional space or cooling capability. Once the new switch is installed, MWI must install a second software upgrade that will permit it to split the traffic from the single switch, and accomplish that split. MWI understands that it will take about ten weeks to complete each software upgrade. When the second upgrade is completed, MWI will be in a position to test and deploy the new technology.

MWI submits that it has no reasonable alternative than to wait for Nortel to provide it with a quote for the aforementioned switch splitting and software upgrades. MWI's system is completely based on Nortel infrastructure; any alternative TTY solution would require a complete replacement of MWI's entire system. Such an action would be financially prohibitive and economically wasteful and, in any case, would not be achievable by the June 30, 2002 deadline. MWI chose the dual switch to serve its rural market because it was more economical than a two-switch system. As a rural operator, MWI's license area is comparatively sparsely populated; it does not receive a return on its infrastructure development investment as rapidly as non-rural operators. Therefore, when constructing its system MWI chose a dual load switch, the most economical alternative. At the time MWI purchased the switch, it did not envision that Nortel would discontinue its support of the technology a few short years later.

MWI currently offers its customers two different models of Motorola handsets. Motorola has informed MWI that sometime in July 2002, it will release software that, when uploaded, will

make Motorola handsets TTY capable. MWI is awaiting delivery of that software and will make it immediately available upon request. In addition, MWI will be evaluating two new Nokia handsets, model 6385 and 3585, which are due to be released in July/August and October, respectively. Both models are reportedly TTY compatible and MWI would expect to offer them for sale as well. However, the TTY feature will not become functional until MWI's system upgrade is completed. To date, MWI has not had a single request for TTY capable equipment.

As demonstrated above, MWI has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18(c). While Section 20.18 of the Commission's Rules imposes TTY obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged that achieving full regulatory compliance requires the cooperative efforts of carriers and equipment manufacturers and suppliers. As a service provider only, MWI would be unable to achieve compliance with the Commission's TTY requirements without the availability of necessary equipment. MWI simply does not and will not have the equipment available to it to meet the June 30, 2002 deadline. As a small market carrier, MWI does not have the buying power of the national carriers and must wait for the equipment requirements of the larger carriers to be satisfied before Nortel will turn its attention to MWI's requirements and MWI will be able to upgrade its system to meet regulatory obligations.

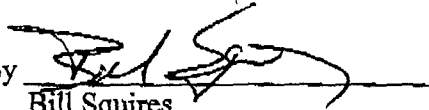
### **III. CONCLUSION**

It is clear that MWI has been diligent in pursuing compliance with the Commission's TTY requirements, but is unable to meet the requirements due to matters that are utterly beyond

its ability to control. In view of the foregoing, MWI respectfully submits that the waiver requested herein is in the public interest and respectfully requests that it be granted.

Respectfully submitted,

**Montana Wireless, Inc.**

By   
Bill Squires  
Senior Vice President - General Counsel

Montana Wireless, Inc.  
1221 North Russell Street  
Missoula, Montana 59808-1805  
(406) 541-5000  
(406) 541-5099 (fax)

John A. Prendergast  
Kathleen A. Kaercher  
Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast  
2120 L Street, NW Suite 300  
Washington, DC 20037

(202) 659-0830  
(202) 828-5568 (fax)

**Dated:** June 28, 2002